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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/416,501	10/08/1999	BRIAN S. DOYLE	42390.P4514D	6248

7590

04/21/2003

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EXAMINER

ORTIZ, EDGARDO

ART UNIT

PAPER NUMBER

2815

DATE MAILED: 04/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory ActionApplication No.
09/416,501Applicant(s)
DoyleExaminer
Edgardo OrtizArt Unit
2815

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Mar 31, 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 28-31, 33, 34, and 37

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation Sheet:
Serial Number: 09/416,501

Applicant's arguments have been fully considered, but they are not deemed to be persuasive. Applicant argues that "it is not clear how the structure taught by Yonehara could be modified in accordance with the subject matter of Claim 28 because neither Yonehara nor Fig. 2 discloses or suggests that is possible to fabricate a second layer of active devices made of single silicon crystal with metal lines intercoupling the active devices". The examiner disagrees and notes that, as stated in the rejection, Yonehara teaches a first substrate portion (23) having a dielectric (24) on a surface and a second single crystal substrate (22) portion, wherein the dielectric layer of the first substrate portion is bonded directly to the second substrate portion and Applicant's admitted prior art figure 2 teaches a primary substrate (202) having a first level of active devices (204) formed thereon and defining a device surface and at least a secondary substrate (Si) coupled to the device surface and selected active devices are intercoupled via metal lines (207). Therefore the claimed invention does not structurally distinguish from that taught by the prior art.

Applicant further argues that "the reference (Yonehara) relied upon by the Examiner does not relate to the same problem confronted by the inventor, Applicant submits that the obviousness rejection of Claim 28 is based on an impermissible hindsight". The examiner notes that the claimed invention does not structurally distinguish from the prior art cited and in response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgement on obviousness is in any sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the invention was made, and does not include knowledge gleaned only from the Applicant's disclosure, such a reconstruction is proper. In re McLaughlin, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971).


SHEILA V. CLARK
PRIMARY EXAMINER